



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.:EMse13011681
[REDACTED]

[REDACTED]
Complainant,

v.

FOREST RIVER, INC.
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred in this instance. 910 IAC 1-3-2(b).

On January 22, 2013, [REDACTED] ("Complainant") filed a Complaint with the Commission against Forest River, Inc., ("Respondent") alleging discrimination on the basis of sex/pregnancy in violation of [REDACTED] the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was discriminated against on the basis of her pregnancy. In order to prevail on such a claim, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations at the time of her termination; and (4) there exists a nexus between the adverse employment action and her pregnancy.

Complainant clearly is a member of a protected class by virtue of her pregnancy and it is apparent that she suffered an adverse action when Respondent terminated her employment on January 16, 2013. Further, there is evidence that she was meeting Respondent's legitimate business expectations and that Respondent's rationale for Complainant's termination is unworthy of credence, lacks credibility, and may indicate pretext for unlawful discrimination.



By way of background, Complainant began working for Respondent in February 2011. She continued her employment with Respondent without issue until she applied for and received certified FMLA paperwork on December 28, 2012. On January 11, 2013, Complainant presented the paperwork to Respondent who on or around January 14, 2013, moved Complainant to another department and decreased her pay from \$14.00/ hour to \$8.00/hour. The evidence shows and Respondent admits that Complainant's supervisor (Bill Elliott) decided to take Complainant off of ladder work because of her pregnancy and that she nearly injured herself in the past performing such tasks. Instead, Respondent hired a new employee (Jenny Reese) to perform all tasks requiring a ladder and Complainant was reassigned to perform tasks that did not require a ladder. However, a few days later, Mr. Elliott instructed a Group Leader to order Complainant to return to working on the ladder. When Complainant inquired about the move, the Group Leader told her to perform the tasks or go home. As Complainant was leaving, Jeff Abney (General Manager), Mr. Elliott, and the Group Leader met her at the door and asked her if she was quitting. Complainant asserts that she stated she would never quit her job, but Mr. Abney told her that if she did not perform the tasks, she was quitting. Ultimately, Complainant was terminated for insubordination on January 16, 2013. The Pregnancy Discrimination Act ensures that if a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer must treat her in the same way it treats other temporary impaired employees. However, evidence shows that Respondent treated Complainant less favorably than employees with other short term impairments; as such, Respondent's proffered reason for the adverse employment action against Complainant appears to be pretext for unlawful discrimination on the basis of pregnancy. Thus, based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice has occurred.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged in the above-referenced case. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may elect to have these claims heard in the same circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election, or the Indiana Civil Rights Commission will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

September 16, 2013

Date

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission